

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 01-0332P**

**Use Tax**

**Calendar Years 1996, 1997, and 1998**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE(S)**

**I. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

**STATEMENT OF FACTS**

Taxpayer was audited for calendar years 1996, 1997, and 1998. At audit, it was determined that the taxpayer failed to self assess and remit use tax for clearly taxable items. In 1996 it remitted seven percent (7%), in 1997 one-half percent (1/2%), and none in 1998. Taxpayer remitted the minimal tax on its income tax returns.

Taxpayer failed to self assess use tax for clearly taxable items such as beds, mattresses, wallpaper, carpeting, electrical equipment, food and beverages not sold, and other miscellaneous items.

**I. Tax Administration – Penalty**

**DISCUSSION**

Taxpayer protests the penalty assessed and states the underpayment of use tax on purchases does not fall within the definition of negligence because the returns and payments of tax were remitted timely, and it has taken considerable time and effort to ensure that use taxes are paid appropriately. Taxpayer further states that all errors found in the field audit were errors that it had no knowledge of at the time and thus had no control over preventing.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable

taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer."

Taxpayer failed to self assess and remit use tax on more than ninety percent of its purchases and has not provided reasonable cause to allow the department to waive the penalty.

### **FINDING**

Taxpayer's protest is denied.